

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

PETER MAYEN, Petitioner, vs. WARDEN FLUKE, and JASON RAVENSBORG, ATTORNEY GENERAL OF THE STATE OF SOUTH DAKOTA, Respondents.	4:21-CV-04145-KES ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING PETITION FOR CERTIFICATE OF APPEALABILITY
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Petitioner, Peter Mayen, filed a pro se petition for writ of habeas corpus under 28 U.S.C. § 2254. Docket 1. In his petition, Mayen seeks habeas relief. *Id.* The petition was assigned to United States Magistrate Judge Veronica L. Duffy under 28 U.S.C. § 636(b)(1)(B), and this court's October 16, 2014, standing order. After a preliminary review according to Rule 4 of the Rules Governing Habeas Cases, the court issued an order to show cause directing both parties to address why Mayen's petition should not be dismissed for untimeliness. Docket 7. Mayen responded. Docket 9. On September 9, 2021, respondents moved to dismiss Mayen's petition. Docket 11. *Id.*

On December 21, 2021, Magistrate Judge Duffy filed a report and recommendation that recommended dismissal with prejudice of all of Mayen's habeas claims as untimely. Docket 14 at 9.

The court's review of a Magistrate Judge's report and recommendation is governed by 28 U.S.C. § 636 and Rule 72 of the Federal Rules of Civil Procedure. The court reviews de novo any objections to the magistrate judge's recommendations with respect to dispositive matters that are timely made and specific. 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b). In conducting its de novo review, this court may then "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *United States v. Craft*, 30 F.3d 1044, 1045 (8th Cir. 1994).

Mayen did not file objections to Magistrate Judge Duffy's report and recommendation. After de novo review of the record, the court adopts the report and recommendation in full and dismisses Mayen's petition.

"[A] state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition." *Miller-El v. Cockrell*, 537 U.S. 322, 335 (2003) (citing 28 U.S.C. § 2253). "Before an appeal may be entertained, a prisoner who was denied habeas relief in the district court must first seek and obtain a COA from a circuit justice or judge." *Id.* at 335–36. A certificate may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(2). A "substantial showing" is one that demonstrates "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The court finds that Mayen fails to make a substantial showing that his constitutional rights were denied. Consequently, a certificate of appealability is denied as to all claims.

Thus, it is ORDERED

1. Magistrate Judge Duffy's report and recommendation (Docket 14) is adopted in full.
2. Respondents' motion to dismiss (Docket 11) is granted, and Mayen's petition (Docket 1) is dismissed with prejudice.
3. A certificate of appealability is denied.

Dated January 10, 2022.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE